CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 30 **JUNE 5, 1996** **NO. 23**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, Printing and Mail Branch, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

Treasury Decisions

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

8 CFR Part 100

INS No. 1677–94

RIN 1115–AD84

DEPARTMENT OF THE TREASURY
CUSTOMS SERVICE

19 CFR Part 122

(T.D. 96–44)

RIN 1515–AB64

CUSTOMS/INS FIELD ORGANIZATIONS; REVOCATIONS AND DESIGNATION OF INTERNATIONAL AIRPORT STATUS FOR CUSTOMS SERVICES AND PORTS OF ENTRY FOR ALIENS ARRIVING BY AIRCRAFT

AGENCIES: Immigration and Naturalization Service, Justice; Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations of both the Customs Service (Customs) and the Immigration and Naturalization Service (the Service) pertaining to their respective field organizations. The document removes Eagle Pass Municipal Airport located in Eagle Pass, Texas, as an international airport for Customs purposes and as a port of entry for aliens arriving by vessel or by land transportation for Service purposes. This document also designates Maverick County Airport located in Maverick County, Texas, as a new international airport for Customs purposes and as a port of entry for aliens arriving by vessel, land transportation, or by aircraft for Service purposes. These changes

will assist both agencies in their continuing efforts to achieve more efficient use of their personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT:

At Customs Service: Priscilla Frink, Passenger Operations Division, Office of Field Operations, (202) 927–1323;

At Immigration and Naturalization Service: Andrea Sickler, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street, N.W., Room 7228, Washington, D.C. 20536, (202) 616–7993.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 27, 1995, the Customs Service (Customs) and the Immigration and Naturalization Service (the Service) published a joint notice of proposed rulemaking in the Federal Register (60 FR 15703) that solicited comments concerning proposals to amend their respective regulations regarding their field organizations. Customs proposed amending § 122.13 of the Customs Regulations (19 CFR 122.13), which lists international airports, to reflect (1) the revocations of international airport designations for Ranier International Seaplane Base located in Ranier, Minnesota, and Eagle Pass Municipal Airport located in Eagle Pass, Texas, and (2) the designation of Maverick County Airport located in Maverick County, Texas, as an international airport. Similarly, the Service proposed amending 8 CFR 100.4(c)(2) and (3) which pertain to ports of entry for aliens arriving by vessel, land transportation, or by aircraft, to reflect (1) the removal of the same two ports of entry (Ranier International Seaplane Base in the Service District of St. Paul, Minnesota, and Eagle Pass Municipal Airport in the Service District of San Antonio, Texas), and (2) the designation of Maverick County Airport as a port of entry for the processing of aliens arriving by vessel, land transportation, or by aircraft.

At the time of drafting the joint notice of proposed rulemaking it was believed that the proposed changes to the field organizations of the two agencies would not result in any significant reduction in Customs/Immigration services in those areas. Future Minnesota transactions were to be handled at either Sky Harbor Airport or Crane Lake Seaplane Base, both landing rights airports. Future Texas transactions were to be handled at Maverick County Airport, also a landing rights airport, which was to be designated as an international airport for Customs purposes and a port of entry for Service purposes. The public comment period for the proposed amendments closed May 26, 1995.

DISCUSSION OF COMMENTS

Ranier:

Two comments were received, both protesting the revocation/withdrawal of the international airport/port of entry designation for Ranier International Seaplane Base located in Ranier, Minnesota. Both comments stated that revocation of the Ranier International Seaplane Base would be inappropriate because the facility was important to the commercial and private seaplane traffic crossing at the Ontario and Northern Minnesota borders. Accordingly, after further consideration of the matter and discovering that the community has taken action to improve the inspection facilities at the Seaplane Base and to eliminate unsafe working conditions, Customs and the Service have decided to withdraw their proposal regarding the revocation/withdrawal of international airport/port of entry status for Ranier International Seaplane Base, Minnesota.

Eagle Pass/Maverick:

No comments were received regarding the (1) revocation/ withdrawal of the international airport/port of entry status for Eagle Pass Municipal Airport, Texas, and the (2) designation of Maverick County Airport, Texas, as an international airport/port of entry. Accordingly, after further consideration of this matter, Customs and the Service have decided to proceed with the final rule respecting this change in their field organization. However, it will not be necessary to amend 8 CFR 100.4(c)(3) to remove "Eagle Pass, TX, Eagle Pass Airport" as a port of entry for aliens arriving by aircraft, since this action has already been accomplished by the Service in a final rule published on November 14, 1995, at 60 FR 57165.

CONCLUSION

Accordingly, Customs and the Service are amending their respective regulations regarding the (1) revocation/withdrawal of the international airport/port of entry status for Eagle Pass Municipal Airport, Texas, and the (2) designation of Maverick County Airport, Texas, as an international airport/port of entry. The International Seaplane Base located in Ranier, Minnesota, will continue to provide Customs and Immigration services.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301, 8 U.S.C. 1103, and 19 U.S.C. 2, 66, and 1624.

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDERS 12606, 12612, AND 12866

Although the joint notice of proposed rulemaking published solicited public comments, because these regulatory amendments relate to agency management and organization matters, pursuant to the provisions of 5 U.S.C. 553(a)(2), they are not subject to the notice and public procedure requirements. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).*

Pursuant to the provisions of E.O. 12606, the Commissioners of Customs and the Immigration and Naturalization Service certify that they have assessed these amendments in light of the criteria set forth in that E.O., and determined that this regulation will not have a significant impact on family formation, maintenance, and general well-being.

Pursuant to the provisions of E.O. 12612, it is certified that this regulation has been assessed in light of the principles, criteria, and requirements specified in that E.O. and that they will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the preparation of a Federalism Assessment is not warranted.

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, U.S. Customs Service; however, personnel from other offices and agencies participated in its development.

LIST OF SUBJECTS

8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations and part 122 of chapter I of title 19 of the Code of Federal Regulations are amended as follows:

TITLE 8—ALIENS AND NATIONALITY

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. In § 100.4, paragraph (c)(2) is amended by:

a. Removing "Eagle Pass, TX" from the Class A listing under District No. 14—San Antonio, Texas; and by

b. Adding, in proper alphabetical sequence, "Maverick, TX" to the Class A listing under District No. 14—San Antonio, Texas.

3. In § 100.4, paragraph (c)(3) is amended by adding, in proper alphabetical sequence, "Maverick, TX, Maverick County Airport" to the Class A listing under District No. 14—San Antonio, Texas.

TITLE 19—CUSTOMS DUTIES

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644,; 49 U.S.C.App. 1509.

2. In § 122.13, the list of international airports is amended by removing "Eagle Pass, Tex.—Eagle Pass Municipal Airport" and adding, in appropriate alphabetical order, "Maverick, Tex.—Maverick County Airport".

GEORGE J. WEISE,
Commissioner of Customs.

Approved: May 2, 1996.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

Dated: April 12, 1996.
DORIS MEISSNER,
Commissioner of Immigration and Naturalization Service.

[Published in the Federal Register, May 23, 1996 (61 FR 25777)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 22, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TIE-IN SALE TRANSACTIONS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: This notice reminds the public that sales of imported merchandise in which there is a condition or consideration for which a value cannot be determined, such as a tie-in sale, will preclude the use of transaction value as a basis of appraisement. A tie-in sale of imported merchandise is one in which the sale of or price for the imported merchandise is conditioned on the sale of or consideration for other merchandise. Pursuant to 19 U.S.C. 1484(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. The importer's use of transaction value in circumstances in which there is a tie-in sale constitutes a failure to exercise reasonable care.

DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Laurie Ross (202) 482–7010.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The primary method of appraising imported merchandise is transaction value. Section 402(b) of the Tariff Act of 1930, as amended by the

Trade Agreements Act of 1979 (TAA; 19 U.S.C. 1401a), provides that the transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus certain specified additions. The "price actually paid or payable" is defined in section 402(b)(4)(A) of the TAA as:

> The total payment (whether direct or indirect * * *) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Thus, transaction value requires a sale of imported merchandise and a direct or indirect payment for the merchandise that benefits the seller. However, the sale and/or the price actually paid or payable for the imported merchandise cannot be subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise. *See,* Section 402(b)(2)(A)(ii) of the TAA and section 152.103(k)(2), Customs Regulations (19 C.F.R. 152.103(k)(2)). As discussed below, tie-in sale transactions represent a condition or consideration for which a value cannot be determined.

Interpretative notes 1 through 3 to 19 C.F.R. 152.103(k)(2) provide examples of importation transactions illustrative of a condition or consideration for which a value cannot be determined. Each of these three examples, set forth below; depicts a type of tie-in sale:

> (i) The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.
>
> (ii) The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.
>
> (iii) The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

The issue of tie-in sale transactions is not new. In a notice published in the CUSTOMS BULLETIN on May 30, 1990, and in a follow-up report published on February 6, 1991, Customs addressed the issue of tie-in sale transactions as it relates to counter trade activities. The treatment of tie-in sales that appears in the text of Commentary 11.1 of the Technical Committee on Customs Valuation of the World Customs Organization (formerly known as the Customs Cooperation Council) was included in the published report.

Below is an example of a tie-in sale arrangement which Customs believes is occurring in the flatware industry. This example is similar to the kind of situation described in interpretative note 1 to 19 C.F.R. 152.103(k)(2) and is illustrative of what Customs considers to be a tie-in sale. In this example the selling price for one imported good is conditioned on the selling price of the other imported good.

> An importer and foreign seller agree that the importer will purchase both knives and spoons to be shipped in the same or consecu-

tive shipments. The selling price for each type of utensil is adjusted by the seller to the extent that the unit price for the knives is increased, while the unit price for the spoons is reduced. The amount by which each price is changed is calculated to ensure that the total payment for the knives and spoons together is unchanged.

Example:

Sellers prices for knives and spoons sold separately:
Knives: $2.75/dozen ($0.229 each)
Spoons: $1.00/dozen ($0.083 each)

If the price of each type of utensil were not conditioned on the price of the other, the Seller's prices for 50,000 dozen each of knives and spoons sold together would be:

50,000 dozen knives: $2.75/dozen = $137,500
50,000 dozen spoons: $1.00/dozen = $50,000

Under a tie-in sale pricing arrangement the price of each type of utensil is adjusted:

Knives: unit price increased by $.25 to $3.00/dozen ($.25 each) = $150,000
Spoons: unit price reduced by $.25 to $.75/dozen ($0.0625 each) = $37,500

The pricing adjustments need not require a one-to-one ratio of knives to spoons. For instance, when orders are placed, the quantity of spoons often exceeds file quantity of knives. In such instances, the seller increases the selling price of the knives as described above, but reduces the selling price of the spoons by a lesser amount per dozen. The adjustments, however, are calculated to result in an identical offset.

As stated above, such tie-in pricing arrangements constitute a condition or consideration for which a value cannot be determined because the sale and price of one product are dependent on the sale and price of the other product. Thus, in accordance with section 19 U.S.C. 1401a(b)(2)(A)(ii) and 19 C.F.R. 152.103(k)(2), imported goods for which the price has been determined in this manner may not be appraised under transaction value and appraisement must proceed under one of the other hierarchical methods of valuation described in section 402 of the TAA.

Pursuant to 19 U.S.C. 1484(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. The use of transaction value in those circumstances in which a tie-in sale exists constitutes a failure to exercise reasonable care.

Importers who have concerns as to whether their importation transactions represent tie-in sales are advised to exercise reasonable care by seeking the opinion of an expert or to obtain a ruling from this office.

Dated: May 17, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 22, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A WOMAN'S SANDAL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of a woman's sandal. Notice of the proposed revocation was published on April 10 1996, in the CUSTOMS BULLETIN, Volume 30, Number 15.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Branch, (202) 482–7058.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 10, 1996, Customs Published a notice in the CUSTOMS BULLETIN, Volume 30, Number 15, proposing to revoke District Decision (DD) 814317, dated September 25, 1995, which classified a woman's sandal with a rubber/plastic sole and an upper of leather and plastic in subheading 6402.99.30, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, other footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: footwear with open toes or open heels; footwear of the slip-on type, that

is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper. No comments were received in response to this notice. Upon further examination of the subject woman's sandal, it is Customs belief that the merchandise is properly classified in subheading 6403.99.90, HTSUSA, in the provision for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather; other footwear; other: other: other: for other persons: valued over $2.50/pair.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking DD 814317 to reflect proper classification of the woman's sandal in subheading 6403.99.90, HTSUSA. HQ 958645 revoking DD 814317, is set forth in the Attachment to this document.

Publications of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1) Customs Regulations (19 CFR 177.10(c)(1)).

Dated: May 15, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 15, 1996.

CLA–2 RR:TC:TE 958645 jb
Category: Classification
Tariff No. 6403.99.90

ROGER J. CRAIN
CUSTOMS SCIENCE SERVICES, INC.
3506 Frederick Place
Kensington, MD 20895–3405

Re: Revocation of a woman's sandal with plastic and leather upper; external surface area of the upper; analysis based on the greatest area exposed on the shoes surface.

DEAR MR. CRAIN:

This is in regard to your letter, dated November 1, 1995, on behalf of your client, BBC International Ltd., requesting reconsideration of DD 814317, regarding the classification of a woman's sandal. A sample was received by this office for examination.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice of the proposed revocation of NY 840648 was published on April 10, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 15.

Facts:

The subject woman's sandal, referenced style "Lofton", consists of a rubber/plastic sole and an upper made of leather and plastic. The upper consists of a two part leather ankle strap assembly with a metal buckle and a leather vamp attached at the toe covering the top of the wearer's foot, which is attached to the ankle strap assembly. Three clear plastic straps are attached to the sides of the sole and are threaded through angled slots in the leather vamp.

In District Decision DD 814317, dated September 25, 1995, Customs determined that the plastic, not the leather, constituted the greatest external surface of the sandal. The sandal was classified in subheading 6402.99.30 HTSUSA, which provides for, other footwear with outer soles and uppers of rubber or plastics other footwear: other: other: footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like hand wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper.

Issue:

Whether the plastic or the leather constitutes the greatest external surface area of the upper?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Heading 6403, HTSUSA, provides for, footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather. General Note (D) to chapter 64, HTSUSA, states, in relevant part:

> For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole * * *.
>
> If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

The greatest external surface area of the upper is the outside surface of what actually covers the foot. In the case of an interwoven upper of various materials, as in the subject merchandise, only the area that is exposed on the shoe's surface should be considered in determining the greatest external surface area. Based upon a visual examination of the submitted sandal, it is the opinion of this office that the greatest external surface area of the upper is formed by the leather. As such, classification in subheading 6402.99.30, HTSUSA, is improper. Accordingly, proper classification for the subject merchandise is in heading 6403, HTSUSA.

Holding:

The subject woman's sandal, referenced style "Lofton", is classified in subheading 6403.99.90, HTSUSA, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather; other footwear; other: other: other: for other persons: valued over $2.50/pair. The applicable rate of duty is 10 percent *ad valorem* and there is no textile restraint category. DD 814317 is hereby revoked.

In accordance with section 625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR CERTAIN CORDLESS TELEPHONE SETS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of country of origin marking ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is proposing to modify a ruling which specifies country of origin marking requirements pertaining to cordless telephone sets. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before July 5, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W., Franklin Court, Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, (202) 482–7076.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the country of origin marking requirements of cordless telephone sets.

In Headquarters Ruling Letter (HRL) 559067, dated September 27, 1995, Customs ruled that telephone components packed together as a set were not substantially transformed by virtue of being packaged as a unit for sale as a telephone set. Consequently it was held that the country of origin of each component must be identified on the retail container or on the articles themselves. This ruling letter is set forth in "Attachment A." This office has examined HRL 559067 in the context of a request for reconsideration and it is our opinion, upon further review, it is partially erroneous.

At issue in this proposed modification is whether the country of origin of each of the components of the subject cordless telephone sets

must be disclosed to the ultimate purchaser in the United States. Customs proposes to modify HRL 559067 to provide that the origin of the telephone line need not be separately identified in light of the position Customs has articulated in T.D. 91–7. Before taking this action, consideration will be given to any written comments timely received. Proposed HRL 559453 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9) will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: May 15, 1996.

SANDRA L. GETHERS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE
Washington, DC, September 19, 1995.
MAR–2–05 R:C:S 559067 DEC

MR. J. KEVIN HORGAN
DEKIEFFER, DIBBLE & HORGAN
Suite 900
915 Fifteenth Street, N.W.
Washington, DC 20005

Re: Country of origin marking of cordless telephone sets; substantial transformation; HRL 734560; HRL 734363; T.D. 91–7.

DEAR MR. HORGAN:

This is in response to your letter dated March 3, 1995, on behalf of your client, Thomson Consumer Electronics, Incorporated (TCE), in which you request a ruling regarding the country of origin marking requirements for certain cordless telephone sets.

Facts:

TCE imports cordless telephone sets produced in China, Malaysia, and the Philippines. You submitted samples of the two telephone units that are the subject of this ruling in the boxes that will reach the ultimate purchaser in the United States. You state that Model 2–9615 is a cordless telephone that includes an extra recharge cradle with a recharging cord incorporated into the cradle and that Model 2–9635 is a cordless telephone which features a speakerphone in the base unit. You provided the following information with respect to the cost, origin, and marking of each component as imported.

Component	*Cost*	*Origin*	*Marking*
Model 2–9615:			
Base Unit	$10.614	Malaysia	Made in Malaysia
Handset	$12.084	Malaysia	None
Recharge Cradle	$01.451	Malaysia	Made in Malaysia
Power Cord	$01.520	China	Made in China
Telephone Line	$00.197	Malaysia	None
Manuals	$00.163	Malaysia	Printed in Malaysia
Packing	$00.513		Made in Malaysia

Component	*Cost*	*Origin*	*Marking*
Model 2–9635:			
Base Unit	$20.938	Malaysia	Made in Malaysia
Handset	$12.724	Malaysia	None
Telephone Line	$00.185	Malaysia	None
Manuals	$00.202	Malaysia	Printed in Malaysia
Packing	$00.810		Made in Malaysia

The power cords and the telephone lines may be sourced in one or more Asian countries, including Malaysia, China, the Philippines, Indonesia, Korea, Singapore, and Hong Kong. Each telephone set will be packed in Malaysia prior to exportation in an individual box that will reach the retail customer. These boxes will be packed with other individually boxed telephone sets in a carton tor shipment to retailers. The individual boxes and the cartons will be marked "Made in Malaysia". You state that TCE does not sell any of the components of the cordless telephone sets individually and the handset cannot be used without the base unit. In addition, the retail consumers of the telephone sets do not ordinarily open the individual consumer box prior to purchasing the item.

Issue:

What is the proper country of origin marking of the imported telephone sets described above?

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin." The primary purpose of the country of origin marking statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A., 297, 302, C.A.D. 104 (1940).

Neither the statute nor Part 134 of the Customs Regulations contain any special requirements regarding the marking of sets, mixtures or composite goods. In the absence of any special requirements, the general country of origin marking rule applies which requires that every article that is imported into the United States must be marked to indicate its country of origin as determined by where the article underwent its last substantial transformation. A substantial transformation occurs when articles lose their identity and become new articles having a new name, character, or use. *United States v. Gibson-Thomson Co.*, 27 C.C.P.A. 267 at 270 (1940); *Koru North America v. United States*, 12 CIT 1120, 701 F. Supp. 229 (1988). The question of when a substantial transformation occurs for marking purposes is a question of fact to be determined on a case-by-case basis. *Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026, *aff'd*, 1 Fed. Cir. 21, 702 F.2d 1022 (1983).

The operations performed to package the various components to form the telephone sets are extremely simple. Hence, no substantial transformation of the non-Malaysian components can be said to occur by virtue of the gathering of the components and placing them in the cartons in Malaysia for retail sale. Accordingly, the country of origin of each component should be identified. *See* Headquarters Ruling Letter (HRL) 734560, dated July 20, 1992. In that ruling, which involved facts substantially similar to those in this case, Customs stated that the telephone components at issue may be excepted from individual country of origin marking pursuant to 19 U.S.C. 1304(a)(3)(D) and section 134.32(d), Customs Regulations (19 CFR 134.32(d)), so long as the customs officials at the port of entry are satisfied that the ultimate purchaser, the retail buyer, receives the set in the carton which is cor-

rectly and conspicuously marked with country of origin. Customs approved the following two markings on the carton:

(1) Telephone base made in (name of country); Handset made in (name of country); Transformer made in (name of country); Line Cord made in (name of country), or similar language; or

(2) Telephone base made in (name of country); Handset made in (name of country); other component parts made in (names of countries). [This marking was approved provided that when grouping together the countries of origin of the remaining component parts, the actual countries of origin of the components must be identified; designating two or more countries in the alternative (either/or) is not satisfactory.]

Alternatively, Customs stated that the importer could mark each component with its country of origin instead of adopting the marking approaches discussed above, and opt not to exercise the 19 CFR 134.32(d) exception for the telephone sets (also discussed above). If this approach is used, Customs emphasized that, without exception, each end every component would have to be marked with country of origin. By marking each component, we indicated that it would remain clear to the consumer that only the marked component, and not telephone set as a whole, originates from the country designated on any one component.

In your submission, you cited HRL 734363, dated February 18, 1992, in which Customs addressed the issue of whether a country of origin marking for a modem that is produced in the United States, but contained a foreign-made transformer and telephone cable was properly marked if the origin of the two foreign articles (the transformer and telephone cable) was not indicated on the sealed container. The importer sought approval of a marking which stated "Transformer and telephone cable of foreign origin are individually marked with specific country of origin."

In that case, both the transformer and the telephone cable were individually marked with their country of origin. The ultimate purchaser was not able to see the country of origin markings prior to purchase because the items were sold in a sealed container which did not indicate the country of origin of these items. Customs decided that because the transformer and the telephone cable represent a very small part of the cost of the modem kits, they were of relatively minor significance, and there were difficulties associated with marking the containers with the country of origin of the cable and transformer because the country of origin of the transformer and cable would vary. Therefore, in accordance with the "common sense" approach to marking articulated in T.D. 91–7, Customs concluded that it was not necessary to mark the containers to indicate the country of origin of the transformer and the telephone cable, provided the container referenced the fact that these articles were of foreign origin and informed the consumer that the articles at issue were individually marked with their specific country of origin.

Customs would have no objection to the marking of the specific articles of foreign origin as was determined acceptable in the modem case.

Holding:

Telephone components packed together as a set are not substantially transformed by virtue of being packaged as a unit for sale as a telephone set. Consequently, the countries of origin of each component must be identified as described above.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SANDRA L. GETHERS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

MAR–2–05 RR:TC:SM 559453 DEC

MR. J. KEVIN HORGAN
DEKIEFFER, DIBBLE & HORGAN
Suite 900
915 Fifteenth Street, N.W.
Washington, DC 20005

Re: Reconsideration of HRL 559067; country of origin marking of cordless telephone sets; request for marking exception; substantial transformation; HRL 734560; HRL 734363; T.D. 91–7; HRL 734505; HRL 734172; economically prohibitive.

DEAR MR. HORGAN:

This is in response to your letter dated September 27, 1995, on behalf of your client, Thomson Consumer Electronics, Incorporated (TCE), in which you request a delay in the effective date of Headquarters Ruling Letter (HRL) 559067, dated September 19, 1995, regarding the country of origin marking requirements for certain cordless telephone sats. In addition, this ruling letter is in response to your letter dated October 10, 1995, on behalf of TCE requesting Customs to review its decision in HRL 559067.

Facts:

TCE imports cordless telephone sets produced in China, Malaysia, and the Philippines. You submitted samples of the two telephone units that were the subject of HRL 559067 in the boxes that will reach the ultimate purchaser in the United States. Model 2–9615 is a cordless telephone that includes an extra recharge cradle with a recharging cord incorporated into the cradle and Model 2–9635 is a cordless telephone which features a speaker phone in the base unit. You provided the following information with respect to the cost, origin, and marking of each component as imported.

Component	*Cost*	*Origin*	*Marking*
Model 2–9615			
Base Unit	$10.614	Malaysia	Made in Malaysia
Handset	$12.084	Malaysia	None
Recharge Cradle	$01.451	Malaysia	Made in Malaysia
Power Cord	$01.520	China	Made in China
Telephone Line	$00.197	Malaysia	None
Manuals	$00.163	Malaysia	Printed in Malaysia
Packing	$00.513		Made in Malaysia
Total Cost	$26.542		
The suggested retail price for Model 2–9615 is $64.99			
Model 2–9635:			
Base Unit	$20.938	Malaysia	Made in Malaysia
Handset	$12.724	Malaysia	None
Telephone Line	$00.185	Malaysia	None
Manuals	$00.202	Malaysia	Printed in Malaysia
Packing	$00.810		Made in Malaysia
Total Cost	$34.859		
The suggested retail price for Model 2–9635 is $89.99			

You stated that the power cords and the telephone lines; may be sourced in one or more Asian countries, including Malaysia, China, the Philippines, Indonesia, Korea, Singapore, and Hong Kong. Each telephone set will be packaged in Malaysia prior to exportation in an individual box that will reach the retail customer marked "Made in Malaysia."

The operations performed to package the various components to form the telephone sets as described in HRL 559067 were found in that case to be extremely simple. Accordingly, Customs concluded that the gathering of the components and placing them in the cartons

in Malaysia for retail sale would not result in a substantial transformation of the non-Malaysian components. The country of origin of each component was required to be identified.

Issues:

1. Will Customs grant a delayed effective date for HRL 559067 or an exception to marking on the basis that it would be economically prohibitive to require TCE to mark the telephones already imported in accordance with HRL 559067?

2. Will Customs modify HRL 559067 so that the imported cordless telephones described above may be legally marked "Made in Malaysia" without referrIng to the country of origin of any of the other components packaged in the retail container?

Law and Analysis:

Delayed Effective Date:

The Custom Service will from time to time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. In situations where a party has relied, not on a previously-issued ruling letter, but on past Customs treatment, Customs requires that the affected party submit an application requesting a delay in the effective date of a ruling letter. In these situations, 19 CFR 177.9(e)(2), sets forth specific requirements for such applications. According to this provision, the applicant must demonstrate to the satisfaction of the Customs Service that the treatment previously accorded relates to substantially identical transactions, and was sufficiently consistent and continuous that the party reasonably relied on the past treatment in the arrangement of future transactions.

Specifically, section 177.9(e)(2) requires that the applicant must submit evidence of past treatment by the Customs Service covering the 2-year period immediately prior to the date of the ruling letter, listing all substantially identical transactions by entry number. In addition, the applicant must provide the quantity and value of merchandise covered by each such transaction, the ports of entry, and the dates of final action by the Customs Service, Section 177.9(e)(2) further notes that, "[t]he evidence of reliance shall include contracts, purchase orders, or other materials tending to establish that the future transactions were arranged based on the treatment previously accorded by the Customs Service." Finally, in order to grant a delay pursuant to 177.9(e)(1), the regulations require that Customs examine all relevant factors regarding the issue of reliance. Section 177.9(e)(3) requires that Customs carefully review the past transactions on which reliance is claimed to determine whether there was an examination of merchandise by Customs. Furthermore, in making the determination to delay, the weight accorded to the documented history of consistent and continuous Customs treatment, will be diminished in the following instances: transactions involving small quantities or values, informal entries, and situations where Customs, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review. *See* 19 CFR 177.9(e)(3).

You submit that the previous treatment accorded by the Customs Service to substantially identical transactions involving cordless telephones was sufficiently consistent and continuous since 1986, so that TCE reasonably relied thereon in arranging future transactions and thus, you contend that TCE has satisfied its claim for detrimental reliance. You state that TCE has been importing and selling 3,149,000 G.E. brand telephone sets annually since 1986 and that the imported telephones have undergone numerous Customs examinations including country of origin marking examinations. Despite the fact that the transformer power supply cords were routinely marked with a country of origin that is different from the origin of the telephone set disclosed on the consumer packaging, you state that TCE was never advised that it was required to reference the origin of minor accessories on the outside consumer packaging.

We find that under the facts in this case, a claim for detrimental reliance has not been established. You have not demonstrated with the specificity that the regulations require that the past import transactions upon which reliance is claimed were examined for proper country of origin marking requirements. In addition, you did not offer evidence of a particular entry where Customs scrutinized and approved of the country of origin marking for cordless telephones that contain power cords and/or telephone lines marked with a country of origin different from the origin of the telephone set disclosed on the consumer packaging. Mere evidence of liquidation of an entry of cordless telephones is not sufficient to establish that the country of origin marking in the prior transaction was substantially

identical to the subject entries. Therefore, a delay in the effective date of HRL 559067 is not warranted because insufficient evidence was submitted.

Country of Origin Marking:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Neither the statute nor Part 154 of the Customs Regulations contains any special requIrements regarding the marking of sets. In the absence of any special requirements, the general country of origin marking rule applies which requires that every article that is imported into the United States must be marked to indicate its country of origin as determined by where the article underwent its last substantial transformation.

In HRL 559067, Customs concluded that the operations performed to package the various components to form the telephone sets are extremely simple and that no substantial transformation of the non-Malaysian components will occur by virtue of the gathering of the components and placing them in the retail cartons in Malaysia. Accordingly, the country of origin of each component should be identified on the retail container. *See* HRL 734560, dated July 20, 1992. Alternatively, Customs stated that the importer could mark each individual component with its country of origin instead of adopting the marking of the retail container and opt not to exercise the 19 CFR 134.32(d) exception for the telephone sets. If this approach is used, Customs emphasized that, without exception, each and every component would have to be marked with country of origin. By marking each component, we indicated that it would remain clear to the ultimate purchaser that only the marked component, and not the telephone set as a whole, originates from the country designated on any one component.

You cite to HRL 734363, dated February 18, 1992, in which Customs addressed the issue of whether a country of origin marking for a modem that is produced in the United States, but contained a foreign-made transformer (or power cord as it will be referred to in this ruling) and telephone cable (or telephone line), was properly marked if the origin of the two foreign articles (the power cord and telephone line) was not indicated on the sealed container. The importer sought approval of a marking which stated "Transformer and telephone cable of foreign origin are individually marked with specific country of origin." Customs approved this marking because the power cord and the telephone line represented a very small part of the cost of the modem kits, they were of relatively minor significance, and there were difficulties associated with marking the containers with the country of origin of the telephone line and power cord because the country of origin of the power cord and telephone line would vary. In accordance with the "common sense" approach to marking articulated in T.D. 91–7, Customs concluded that it was not necessary to mark the containers to indicate the country of origin of the power cord and the telephone line, provided the container referenced the fact that these articles were of foreign origin and informed the consumer that the articles at issue were individually marked with their specific country of origin. Customs would have no objection to the marking of each of the articles of foreign origin included in the cordless telephone sets In the manner that was deemed acceptable in HRL 734363.

We disagree with your conclusion that HRL 555365, dated September 7, 1990, T.D. 91–7, and HRL 734172, dated December 16, 1992, mandate a completely different conclusion than was reached in HRL 559067. Customs has stated that, in certain circumstances, the marking of every item in a collection of goods may not be consistent with the purpose of section 1304, or may be impractical and/or undesirable. This may exist because one or more items in the collection are relatively insignificant and would have no influence on the purchasing decision because the items in the collection are too numerous, thereby making it impractical to specify the country of origin of each item, or for various other reasons.

You claim that the marking of each article or identifying the origin of each article included in the cordless telephone set on its retail container is economically prohibitive. We disagree and refer you to HRL 734505, dated August 27, 1992, where Customs addressed the marking requirements of a portable light/lantern consisting of five major components: the lantern body, a plastic charging rack a charging cord/converter, a rechargeable battery, and a flood lamp. These components were produced in various countries and were imported into the United States to be packaged. Customs determined that the packaging of these components did not result in a substantial transformation noting that some of the parts,

after assembly, retained their independent function. Customs also rejected the importer's claim that it would be economically prohibitive to mark the article's actual country of origin given the variety of different combinations of packaged components because no evidence in support of this claim was submitted. As a possible option, Customs suggested that another possibility would be the use of a pre-printed label that contains all the possible countries of origin printed on it for each component. Then, upon assembly, the actual country of origin could be punched or marked on the pre-printed label. This marking scheme must comply with the Customs statutes and regulations 19 U.S.C. 1304, and 19 CFR Part 134. Customs would have no objection to a marking on the retail container referring to each of the specific articles of foreign origin as was suggested in HRL 734505.

Upon reconsideration of the application of the "common sense approach" of marking to the cordless telephone sets, it is our opinion that the marking of the telephone line is analogous to the loose screws for the junction boxes (HRL 555365) and the metal channels and branch-off clips included in the finished insulation kit (HRL 734172). In both of these cases, Customs determined that certain articles were of minor importance to the product as a whole (the screws in HRL 555365 and the branch of clips in HRL 734172). Accordingly, the container was not required to be separately marked to indicate the country of origin of the screws in HRL 555365 and the metal channels and branch-off clips in HRL 734172. Similarly, Customs would not require that the telephone line when incorporated into the cordless telephone set be separately marked with its country of origin. In determining whether a particular component need not be marked under the "Common sense approach", Customs emphasizes the role of the given component with respect to the complete set over any other consideration. The value alone of the component relative to the article's total cost is not necessarily determinative of whether the component is excepted from marking based on T.D. 91–7. In this case, the fact that the telephone line for either model represents less than one percent of the cost of the imported telephone set, however, supports our conclusion that the telephone line need not be marked.

However, the power cord presents a situation that is distinguishable from that relating to the loose screws for the junction boxes (HRL 555365), the metal channels and branch-off clips included in the finished insulation kit (HRL 734172), and the telephone line for the telephone sets at issue in this ruling. While the value of the power cord may not be substantial relative to the total cost of the cordless telephone set, its role of recharging the battery is critical to the operation of the telephone. As noted above, HRL 555365 presented a situation in which Customs determined that the country of origin of three foreign-trade screws packaged with a U.S.-made metal junction box did not need to be noted on the retail package because the screws lost their separate identity when they were packaged with the junction box. Customs noted that the ultimate purchaser was buying a junction box and not individual screws. In contrast, the power cord will retain its separate identity. In fact, the ultimate purchaser is buying a cordless telephones because it is capable of converting electricity into stored power for the telephone. We disagree with your contention that our position in HRL 559067 and in this ruling letter represents a departure from past practice and T.D. 91–7. Accordingly, the notice and comment procedure described in 19 U.S.C. 1625(c) was not deemed necessary when HRL 559067 was first issued.

You state in your submission that TCE will incur substantial additional marking expenses if TCE is required to mark each individual component with its individual country of origin or if TCE indicates the origin of each component on the consumer carton. You estimate that TCE will incur approximately a $1 per unit additional cost to comply with the country of origin marking requirements using stick-on labels or $2 per unit to have new cartons printed.

It is the opinion of this office that you have not provided sufficient information upon which to grant an exception from individual marking based upon prohibitive economic expense. While we do not doubt the veracity of your statement that marking by means of placing labels on each component would be economically burdensome, the mere assertion that a $1 per unit increase in cost will be "prohibitive" does not provide a sufficient basis for granting this exception to the marking requirement. In addition, we note that it is our policy not to allow a permanent marking exception based upon the prohibitive economic expense provisions under 19 U.S.C 1304(a)(3)(C) and 19 CFR 134.32(c). While Customs appreciates the fact that TCE is a consumer products company that must be concerned about the appearance of their products for marketing purposes, the fact remains, however, that TCE must comply with the statutorily-mandated marking requirements. The mere assertion, without supporting evidence, that stick-on labels may have an adverse market-

ing impact which may cause a loss in consumer appeal is not a basis upon which Customs may grant an exception from marking. Accordingly, we find that the components may not be excepted from country of origin marking under 19 U.S.C. 1304(a)(3)(C) and 19 CFR 134.32(c).

Holding:

Upon reconsideration of HRL 559067, Customs affirms its holding that telephone components packed together as a set are not substantially transformed by virtue of being packaged as a unit tor sale as a telephone set. However, we find that pursuant to the "common-sense approach" to marking articulated in T.D. 91–7, the telephone line does not need to be marked. Consequently, HRL 559067 is modified to reflect this finding. The country of origin of the telephone power cord, however, must be identified as described above. Customs is not persuaded that the power cord does not need to be marked based on the "common-sense approach" to marking. In addition, Customs is not persuaded that there is sufficient evidence to allow a marking exception for the power cord based on the assertion that it would be economically prohibitive to comply with the marking requirements. Your request for a delayed effective date of HRL 559067 is denied for the reasons set forth above.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

NOTE: This is to advise that Slip Op. 96–74 is not available for publication at this time due to the confidential nature of the document. A public version of the document will be released and published in the CUSTOMS BULLETIN when available.

(Slip Op. 96–74)

RHONE-POULENC, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 95–03–00275

(Dated May 9, 1996)

(Slip Op. 96–75)

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF FRANCE S.A., SKF GMBH, SKF INDUSTRIE, S.P.A., SKF (U.K.) LTD., SKF SVERIGE, AB, FAG KUGELFISCHER GEORG SCHAFER KGAA, FAG CUSCINETTI S.P.A, FAG (UK) LTD., BARDEN CORP. (UK) LTD., FAG BEARINGS CORP., BARDEN CORP., BARDEN PRECISION BEARINGS CORP., RHP BEARINGS, RHP BEARINGS INC., PEER BEARING CO., KOYO SEIKO CO., LTD., KOYO CORP. OF U.S.A., NSK LTD., NSK CORP., SNR ROULEMENTS, NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., AND NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, DEFENDANT-INTERVENORS

Consolidated Court No. 92–06–00422

This case concerns the Department of Commerce, International Trade Administration's ("Commerce") final results of redetermination on remand filed pursuant to *Federal-Mogul Corp. v. United States*, 19 CIT ___, Slip Op. 95–181 (Nov. 14, 1995); *Federal-Mobil Corp. v. United States*, 19 CIT ___, Slip Op. 95–184 (Nov. 20, 1995); and *Federal-Mogul Corp. v. United States*, 19 CIT ___, Slip Op. 95–186 (Nov. 20, 1995) ("Remand Results").

Held: The Court sustains Commerce's final Remand Results which recalculate the final dumping margins for SNR Roulements, SKF USA Inc., SKF GmbH, SKF France, S.A., SKF Industrie S.p.A., SKF Sverige AB and SKF (U.K.) Limited, Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. by implementing a tax-neutral adjustment methodology based on the amount of the value added tax in the markets of production rather than the tax rates.

[Motion of NSK Ltd. and NSK Corporation denied; Remand Results affirmed.]

(Dated May 15, 1996)

Frederick L. Ikenson, P.C. (Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V and *Larry Hampel)* for plaintiff, Federal-Mogul Corporation.

Stewart and Stewart (Eugene L. Stewart, Terence P. Stewart, Wesley K. Caine and *Robert A. Weaver)* for plaintiff-intervenor The Torrington Company.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis,* Assistant Director, *Marc E. Montalbine);* of counsel: *Stephen J. Claeys, Craig R. Giesze, Dean A. Pinkert, Thomas H. Fine, Alicia Greenidge, David J. Ross* and *Mark A. Barnett,* Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (Herbert C. Shelley, Alice A. Kipel, Juliana M. Cofrancesco and *Thomas J. Trendl)* for defendant-intervenors SKF USA Inc., SKF France S.A., SKF GmbH, SKF Industrie, S.p.A., SKF (U.K.) Limited and SKF Sverige, AB.

Grunfeld, Desiderio, Lebowitz & Silverman (Max F. Schutzman, Andrew B. Schroth, David L. Simon and *Matthew L. Pascocello)* for defendant-intervenors FAG Kugelfischer Georg Schafer KGaA, FAG Cuscinetti SpA, FAG (UK) Limited, Barden Corporation (UK) Limited, FAG Bearings Corporation, The Barden Corporation and Barden Precision Bearings Corporation.

Covington & Burling (Harvey M. Applebaum, David R. Grace and *Thomas A. Robertson)* for defendant-intervenors RHP Bearings and RHP Bearings Inc.

Venable, Baetjer, Howard & Civiletti (John M. Gurley and *Lindsay B. Meyer)* for defendant-intervenor Peer Bearing Company.

Powell, Goldstein, Frazer & Murphy (Peter O. Suchman, Neil R. Ellis, T. George Davis, Niall P. Meagher and *Susan M. Mathews)* for defendant-intervenors Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.

Lipstein, Jaffe & Lawson (Robert A. Lipstein, Matthew P. Jaffe and *Grace W. Lawson)* for defendant-intervenors NSK Ltd. and NSK Corporation.

Grunfeld, Desiderio, Lebowitz & Silverman (Bruce M. Mitchell, David L. Simon, Philip S. Gallas, Jeffrey S. Grimson, Andrew B. Schroth and *Matthew L. Pascocello)* for defendant-intervenor SNR Roulements.

Barnes, Richardson & Colburn (Robert E. Burke, Donald J. Unger, Kazumune V. Kano and *Diane A. MacDonald)* for defendant-intervenors NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Corporation and NTN Kugellagerfabrik (Deutschland) GmbH.

OPINION

TSOUCALAS, *Judge:* The Department of Commerce, International Trade Administration ("Commerce"), has submitted final results entitled *Final Results of Redetermination Pursuant to Court Remand, Federal-Mogul Corporation and The Torrington Company v. United States, Slip Op. 95–181 (November 14, 1995), Slip Op. 95–184 (November 20, 1995), Slip Op. 95–186 (November 20, 1995) ("Remand Results").* These Remand Results concern *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews ("Final Results"),* 57 Fed. Reg. 28,360 (1992), as amended, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France,*

Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews, 57 Fed. Reg. 32,969, (1992); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 Fed. Reg. 59,080 (1992).

BACKGROUND

The Court previously determined that Commerce incorrectly adjusted United States price ("USP") for value added tax ("VAT") in the markets of production, and directed Commerce to apply the VAT rates in the markets of production to USP calculated at the same point in the stream of commerce as where the foreign VAT rates are applied for home market sales and to add the resulting tax amounts to USP. *See, e.g., Federal-Mogul Corp. v. United States*, 17 CIT 1093, 834 F. Supp. 1391 (1993), *rev'd*, 63 F.3d 1572 (Fed. Cir. 1995).[1]

On August 28, 1995, in *Federal-Mogul Corp. v. United States*, 63 F.3d 1572 (Fed. Cir. 1995), the CAFC confirmed, as indicated in the now well-known "footnote 4" contained in *Zenith*, 900 F.2d at 1582, that a tax-neutral method of adjusting USP by using the *amount*, instead of the *rate*, of an *ad valorem* tax is permissible under section 772 of the Tariff Act of 1930. The CAFC's decision afforded Commerce the opportunity to inform the Court whether it wishes to continue utilizing the tax-neutral methodology employed in the determination that was reviewed by the appellate court. *Federal-Mogul*, 63 F.3d at 1582.

In *Federal-Mogul Corp. v. United States*, 19 CIT ___, Slip Op. 95–181 (Nov. 14, 1995), *Federal-Mogul Corp. v. United States*, 19 CIT ___, Slip Op. 95–184 (Nov. 20, 1995), and *Federal-Mogul Corp. v. United States*, 19 CIT ___, Slip Op. 95–186 (Nov. 20, 1995), respectively, the Court remanded this case to allow Commerce to consider whether it will calculate dumping margins using the tax neutral adjustment methodology approved by the CAFC in *Federal-Mogul*, 63 F.3d at 1572, for SNR Roulements ("SNR"), SKF USA Inc., SKF GmbH, SKF France, S.A., SKF Industrie S.p.A., SKF Sverige AB and SKF (U.K.) Limited (collec-

---

[1] In the Final Results, Commerce sought tax neutral dumping margins and added to USP, an amount for foreign taxes that would have been collected had the export sale been taxed at the home market rate. Commerce added the same tax amount to FMV as that calculated for USP. This was equivalent to calculating the actual home market tax, adding that amount to FMV, and then performing a circumstance-of-sale ("COS") adjustment to FMV to eliminate the absolute difference between the amount of tax in each market. *Final Results*, 57 Fed. Reg. at 28,360. Subsequently, the United States Court of Appeals for the Federal Circuit ("CAFC") held that Commerce is not authorized to make a COS adjustment to equalize the VAT amounts in each market. *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1581–82 (Fed. Cir. 1993) *("Zenith")*. In footnote 4 of *Zenith*, the appellate court also stated that Commerce could eliminate increases in the margin that are inherent in the manner in which the VAT adjustment is calculated by adjusting USP by the *amount*, rather than the *rate*, of the *ad valorem* tax charged in the home market. *Zenith*, 988 F.2d at 1582 n.4. Following the *Zenith* decision, Commerce sought to adjust USP by the amount rather than the rate of the home market tax. The Court disagreed with Commerce's methodology. Finding that footnote 4 is at odds with the body of *Zenith* and 19 U.S.C. § 1677a(d)(1)(C) (1988), the Court rejected Commerce's use of a tax-neutral VAT adjustment methodology. *Federal-Mogul Corp.*, 17 CIT at 1098–99, 834 F. Supp. at 1396–97. Consequently, Commerce devised a new methodology for calculating the adjustment to USP. Under the new methodology, Commerce first added to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce as where the foreign market tax was applied to foreign market sales. Commerce than adjusted the tax in each market to eliminate the tax attributable to expenses that were deducted from either price in determining FMV and USP. *See, e.g., Federal-Mogul Corp. v. United States*, 20 CIT ___, ___, Slip Op. 96–68 at 8 (Apr. 19, 1996).

tively "SKF"), Koyo Seiko Co., Ltd. ("Koyo Seiko") and Koyo Corporation of U.S.A. (collectively "Koyo").

Commerce issued draft results to counsel for interested parties for comment. "There were clerical errors in the initial draft program that [Commerce] released for Koyo Seiko. [Commerce] corrected these errors and reissued corrected Koyo Seiko draft results." *Remand Results* at 2. No comments were received from Koyo or any other party. *Id.* Commerce filed the final Remand Results with the Court on March 1, 1996. The results were limited to only those respondents which had filed motions with the Court requesting a remand.

DISCUSSION

Commerce's final results filed pursuant to a remand will be sustained unless that determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 229 (1938); *Alhambra Foundry Co. v. United States,* 12 CIT 343, 345, 685 F. Supp. 1252, 1255 (1988).

Treatment of Value Added Tax:

In light of *Federal-Mogul,* 63 F.3d at 1572, Commerce has elected to return to the tax-neutral adjustment methodology approved by the Federal Circuit. Therefore, when merchandise exported to the United States is exempt from VAT, the final Remand Results add the absolute amount of the consumption taxes on home market sales to the U.S. price rather than applying the tax rates. *Remand Results* at 5–6. Employing the tax-neutral methodology, Commerce has now recalculated weighted-average dumping margins for the period May 1, 1990 through April 30, 1991 for ball bearings, cylindrical roller bearings and spherical plain bearings for SNR, SKF and Koyo based on the tax-neutral adjustment methodology. *Remand Results* at 6.

NSK Ltd. and NSK Corporation ("NSK") interpose a motion for further remand concerning the VAT methodology applied in this review. According to NSK, Commerce should have extended the Remand Results to NSK and other respondents not filing motions in the underlying action on this issue. NSK requests an order from the Court directing Commerce to recalculate NSK's antidumping duty margins using a tax-neutral adjustment methodology. NSK's Comments on Remand Results and Mem. in Supp. of Mot. for Order of Remand. Commerce opposes NSK's motion. Commerce's Opp'n to Mot. of NSK for Order of Remand.

In the Court's Slip Opinions 95–181, 95–184 and 95–186, to which the Remand Results respond, the Court only ordered Commerce to recalculate tax-neutral dumping margins for those particular parties to this litigation filing motions requesting such recalculation. NSK was responsible for protecting its own rights in this litigation. It failed to do so. In the absence of affirmative action by NSK, it may reasonably expect that its dumping margins will not change.

The VAT issue is disposed of by *Federal-Mogul Corp. v. United States*, 20 CIT ____, Slip Op. 96–68 (Apr. 19, 1996). Accordingly, the Court sustains Commerce's final Remand Results which recalculate the final dumping margins for SNR, SKF and Koyo by implementing a tax-neutral adjustment methodology based on the amount of the value added tax in the markets of production, rather than the tax rates consistent with judicial precedent. In addition, NSK failed to timely act to protect its interest. Therefore, the Court denies NSK's belated motion for an order instructing Commerce to recalculate NSK's dumping margins based on a tax-neutral adjustment methodology.

CONCLUSION

Defendant-intervenor NSK's motion for a further remand is denied. In accordance with the foregoing opinion, the Remand Results pertaining to SNR, SKF and Koyo which employ a tax-neutral adjustment methodology are sustained in their entirety.

(Slip Op. 96–76)

TELECTRONICS PACING SYSTEMS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 91–07–00503

[Substitution of plaintiff's attorneys denied.]

(Dated May 16, 1996)

McDermott, Will & Emery for the plaintiff.
Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Barbara Silver Williams)* for the defendant.

MEMORANDUM AND ORDER

AQUILINO, *Judge:* The court is in receipt of papers filed in this consolidated action, which has been designated a test case pursuant to CIT Rule 84(b), and styled Stipulation for Substitution of Counsel and Order Substituting Counsel. No switch is effectuated by these papers, which reflect ignorance or disregard of the nature and practice of this Court of International Trade, if not of law in general.

CIT Rule 75(a) states that "[o]nly an attorney admitted to the bar of the court may practice before [it]" in an action such as this. There is no indication that the sole signatory of the papers, one Michael J. Weber, satisfies this requirement.

Subsection (c) of Rule 75 provides, in pertinent part, for substitution of attorneys as follows:

> A party who desires to substitute an attorney may do so by serving a notice of substitution upon the prior attorney of record and

the other parties. The notice shall be substantially in the form as set forth in Form 12 of the Appendix of Forms.

Not surprisingly in view of the nature of the importance of this relief, the prescribed form contemplates signature by the party affected, as well as by its substituted counsel. The papers at hand do not bear that required, initial signature (or any other indication of acceptance by the plaintiff).

Parties such as the above-named corporate plaintiff are entitled to representation by members of the bar of their choice, who if indeed admitted presumably are familiar with all of the pertinent rules of practice and with fundamentals like the nature of the Court of International Trade and names of assigned judges. Again on this count, the papers at hand do not exhibit such expectable familiarity. The order filed, for example, which is superfluous under the above rule, refers to this as a "circuit court".

In sum, the attempted substitution of attorneys for the above party plaintiff must be, and it hereby is, rejected.

(Slip Op. 96–77)

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF (U.K.) LTD., AND PRATT & WHITNEY CANADA INC., DEFENDANT-INTERVENORS

Court No. 91–07–00528

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC. AND SKF SVERIGE AB, DEFENDANT-INTERVENORS

Court No. 91–07–00529

FEDERAL-MOGUL CORP., PLAINTIFF AND PLAINTIFF-INTERVENOR, AND TORRINGTON CO., PLAINTIFF AND PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., KOYO SEIKO CO., LTD., KOYO CORP. OF U.S.A., PEER BEARING CO., NSK LTD., NSK CORP., CATERPILLAR INC., MINEBEA CO., LTD., AND NMB CORP., DEFENDANT-INTERVENORS

Consolidated Court No. 91–07–00530 and 91–08–00569

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF FRANCE, S.A., SNR ROULEMENTS, SNR BEARINGS, USA, INC., EUROCOPTER FRANCE, AEROSPATIALE HELICOPTER CORP., AND PRATT & WHITNEY CANADA INC., DEFENDANT-INTERVENORS

Court No. 91–07–00531

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF INDUSTRIE, S.P.A., AND FAG CUSCINETTI S.P.A., DEFENDANT-INTERVENORS

Court No. 91–07–00532

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF GMBH, GMN GEORG MULLER NURNBERG AG, INA WALZLAGER SCHAEFFLER KG, INA BEARING CO., INC., NTN BEARING CORP. OF AMERICA, NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, FAG KUGELFISCHER GEORG SCHAFER KGAA, AND PRATT & WHITNEY CANADA INC., DEFENDANT-INTERVENORS

Court No. 91–07–00533

TORRINGTON CO., PLAINTIFF, AND FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF FRANCE, S.A., AEROSPATIALE DIVISION HELICOPTERES, AND AEROSPATIALE HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00562

TORRINGTON CO., PLAINTIFF, AND FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF GMBH, GMN GEORG MULLER NURNBERG AG, NTN BEARING CORP. OF AMERICA, NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, CATERPILLAR INC., FAG KUGELFISCHER GEORG SCHAFER KGAA, INA WALZLAGER SCHAEFFLER KG, INA BEARING CO., INC., MESSERSCHMITT-BOELKOW-BLOHM, GMBH, AND MBB HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00567

TORRINGTON CO., PLAINTIFF, AND FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF INDUSTRIE, S.P.A., AND FAG CUSCINETTI S.P.A., DEFENDANT-INTERVENORS

Court No. 91–08–00568

(Dated May 16, 1996)

ORDER

TSOUCALAS, *Judge:* Pursuant to Court Orders of November 13, 1995, November 22, 1995, December 1, 1995, January 2, 1996 and January 4, 1996, this Court remanded to the Department of Commerce, International Trade Administration ("Commerce") the final results of administrative reviews entitled *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom Initiation of Antidumping Administrative*

Reviews ("Final Results"), 55 Fed. Reg. 23,575 (June 11, 1990). The remands pertained to antifriction bearings (other than tapered roller bearings) and parts thereof ("AFBs") from Japan, France, Germany, Italy, the United Kingdom and Sweden which were produced by NTN Corporation (NTN-Japan), Koyo Seiko Corporation ("Koyo"), SNR Roulements ("SNR"), SKF Industrie, S.p.A. ("SKF-Italy"), FAG Cuscinetti S.p.A. (FAG-Italy), NTN Kugellagerfabrik GmbH (NTN-Germany), FAG Kugelfischer Georg Schafer KGaA ("FAG-Germany"), GMN Georg Muller Nurnberg AG ("GMN"), SKF (U.K.) Ltd. ("SKF-UK"), SKF Sverige AB (SKF-Sweden), SKF France, S.A. ("SKF-France") and SKF GmbH ("SKF-Germany"). The Final Results covered the period November 9, 1988 through April 30, 1990.

In *Federal-Mogul Corp. v. United States*, 63 F.3d 1572 (Fed. Cir. 1995), the United States Court of Appeals for the Federal Circuit ("CAFC") held that Commerce is not precluded from achieving tax neutrality by adding to United States price ("USP") the amount of the tax collected in the home market and afforded Commerce the discretion to return to a tax-neutral methodology in accounting for value added tax ("VAT").[1] Decisions and mandates by the CAFC Appeal Nos. 94–1183, 94–1184, 94–1198, 94–1148, 94–1182, 94–1149, 94–1187, 94–1175, 94–1150, 94–1151, 94–1344, 95–1142, 94–1188 and 94–1185, echoed that position. The judicially approved methodology adds the absolute amount of the consumption taxes on home market sales to the U.S. price in accordance with the CAFC's observation in footnote 4 of *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1582 (1993), that the statute allows such an adjustment.

In the above-captioned cases, the Court directed Commerce to recalculate the final dumping margins at issue by implementing a tax-neutral adjustment methodology based on the amounts of foreign taxes rather than the tax rates to establish the dumping margins. Commerce has complied with the Court's directive and has filed with the Court its redetermination entitled *Federal-Mogul Corporation and The Torrington Company v. United States, Slip Op. 95–179 (November 13, 1995); Slip Op. 95–188, Slip Op. 95–189, Slip Op. 95–190, Slip Op. 95–191 (November 22, 1995); Slip Op. 95–196 (December 1, 1995); Slip Op. 96–1, Slip Op. 96–2, Slip Op. 96–3, Slip Op. 96–4, Slip Op. 96–5, Slip Op. 96–6 (January 2, 1996); Slip Op. 96–9, Slip Op. 96–10 (January 4, 1996), Final Results of Redetermination Pursuant to Court Remand ("Remand Results")*.

Thus, for these final Remand Results, "when merchandise exported to the United States is exempt from the VAT, [Commerce] added to USP the absolute amount of such taxes charged on the comparison sales in the home markets." *Remand Results* at 6. Commerce recalculated the final dumping margins for Koyo, NTN-Japan, SNR, SKF-Italy, FAG-Italy, NTN-Germany, FAG-Germany, GMN, SKF-UK, SKF-Sweden,

[1] Commerce subsequently informed the Court that it wished to return to the tax-neutral methodology that was found by the appellate court to be reasonable.

SKF-France and SKF-Germany by implementing a tax-neutral adjustment methodology based on the amounts of the VATs in the markets of production, rather than the tax rates.[2] Therefore, the Remand Results filed by Commerce on March 4, 1996 are affirmed in all respects.

[2] Commerce notes:

> For respondents Koyo and NTN Japan, this methodology was employed, respectively, in the Department's *Final Results of Redetermination Pursuant to Court Remand*, submitted to the CIT on June 28, 1993 *(Federal-Mogul Corporation v. United States*, Slip Op. 93–17, and *The Torrington Company v. United States*, Slip Op. 93–44) and on September 27, 1993 *(NTN Bearing Corporation of America v. United States*, Slip Op. 93–129). No intervening court orders have changed other methodologies we employed in the final results of administrative review; therefore, we have continued the margin results determined in the redeterminations pursuant to Slip Op. 93–17 and Slip Op. 93–44, and Slip Op. 93–129.

Remand Results at 9.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C96/35 5/13/96 Musgrave, J.	Plastical Industries, Inc.	95–07–00884	4202.92.45 20%	3924.90.55 3.4%	Agreed statement of facts	Not stated Plastic garment bags
C96/36 5/13/96 Pogue, J.	Wholesale Supply Company, Inc.	93–12–00839	7013.39.20 Valued not over $3 each 30%	7013.39.10 12.5%	Agreed statement of facts	Houston Tempered glassware
C96/37 5/16/96 Goldberg, J.	Algoma Steel Corp.	90–10–00542	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks
C96/38 5/16/96 Goldberg, J.	Algoma Steel Corp.	90–12–00659	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks
C96/39 5/16/96 Goldberg, J.	Algoma Steel Corp.	91–04–00269, 91–06–00468	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks

C96/40 5/16/96 Goldberg, J.	Algoma Steel Corp.	91-11-00834, 92-02-00090	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Detroit and Sault Ste. Marie Solid steel circle blanks
C96/41 5/16/96 Goldberg, J.	Algoma Steel Corp.	93–01–00019, 93–02–00126, 93–05–00285, 93–05–00279	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie and Detroit Solid steel circle blanks
C96/42 5/16/96 Goldberg, J.	Algoma Steel Corp.	93–06–00369	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks
C96/43 5/16/96 Goldberg, J.	Algoma Steel Corp.	95–03–00255	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks

ABSTRACTED CLASSIFICATION DECISIONS–*Continued*

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C96/44 5/16/96 Goldberg, J.	Dofasco Inc.	92–04–00221, 92–04–00234, 92–04–00236	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks
C96/45 5/16/96 Goldberg, J.	Dofasco Inc.	92–10–00663, 92–10–00664, 92–11–00746, 93–02–00124	7208.44.00CA, 7208.45.00CA, 7208.90.00CA, 8708.29.0050CA 4.9% and 1.5%; 5% and 1.5%; 5.1% to 1.5%; 3.1% to 0.9% depending on the year of entry as products of Canada	7326.19.00B Free as a product of Canada	Motor Wheel Corp. *v.* United States Slip Op. 95–49 (March 20, 1995) Court No. 90–10–00549	Sault Ste. Marie Solid steel circle blanks

Index

Customs Bulletin and Decisions
Vol. 30, No. 23, June 5, 1996

U.S. Customs Service

Treasury Decisions

General Notices

CUSTOMS RULINGS LETTERS

U.S. Court of International Trade

Slip Opinions

Abstracted Decisions

Federal Recycling Program
Printed on Recycled Paper
U.S. G.P.O. 1996–405–477–00090